



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 98 243 52075 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:

SEP 12 2000

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks employment as a staff scientist at [REDACTED]

The director denied the petition because the pertinent regulations do not allow an alien to file a self-petition for this immigrant visa classification.

This petition was filed by the alien himself, on his own behalf. Service regulations at 8 C.F.R. 204.5(i)(1) state that a petition for an outstanding professor or researcher may be filed by "[a]ny United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field." The regulations contain no provision allowing alien professors or researchers to file petitions on their own behalf in this visa classification.

On appeal, counsel argues that the "[p]etitioner meets the qualifications of employment, as he has been employed [by] [REDACTED] . . . [REDACTED] continues to employ [the petitioner] and has continued to offer [the petitioner] a position as staff scientist since 1995." Counsel adds "[w]e contend that the [director] improperly denied the [petition]. . . . Petitioner has [been] and continues to be employed."

Counsel's response fails to overcome the basic grounds for denial. The above regulations require not only that the alien must have a job offer, but that the U.S. employer must file the petition. Counsel concedes that the petitioner is the alien himself, rather than the U.S. employer. The Form I-140 petition repeatedly identifies the alien, and only the alien, as the petitioner, and the alien, rather than any [REDACTED] official, signed the petition. The alien is not a U.S. employer, regardless of whether or not [REDACTED] already employed him as of the filing date.

The remainder of the appeal submission is irrelevant to the grounds for denial and warrants no discussion here.

Only the intending U.S. employer may file a petition for an outstanding professor or researcher. Therefore, the petition in this matter has not been properly filed and it cannot lawfully be approved. Accordingly, the appeal must be dismissed.

ORDER: The appeal is dismissed.